IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 25TH AUGUST 2006 / 3RD BHADRA 1928

WP(C).No. 20090 of 2006(N)

PETITIONER:

M.K.MURALEEDHARAN UNNITHAN,
I GRADE SURVEYOR, SPL. TAHSILDAR OFFICE-LA NO.1,
KOLLAM, RESIDING AT "JYOTI BHAVAN",
SOCIETY JUNCTION, ANCHAL P.O.,
KOLLAM DISTRICT.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS:

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1. THE DIRECTOR OF SURVEY,
O/O. THE DIRECTOR OF SURVEY,
THIRUVANANTHAPURAM.

2. SUPERINTENDENT OF RE-SURVEY,
O/O. THE RE-SURVEY SUPERINTENDENT OFFICE,
ANCHAL P.O., KOLLAM.

BY GOVT. PLEADER SHRI. MANOJ KUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/11/2006, THE COURT ON 25/08/2006 DELIVERED THE FOLLOWING:

WP(C).No.20090/2006.

Petitioner's Exhibits:

P1: Copy of the Application dtd.26-7-1999 filed by R.Raveendran, before the 2nd respondent.

P2: Copy of the Memo of charges No.B3.54/2002 issued by the 2nd respondent to the petitioner.

P3: Copy of the Order No.B3.54/2002 dated 27-5-2002 passed by 2nd respondent.

P4: Copy of the order No.Survey/G5.12461/02 dated 18-12-2004 passed by the 1st respondent.

P5: Copy of the Memo of Charges No.D3.54/2002 dated 12-1-2005 issued by the 2nd respondent.

P6: Copy of the order No.B3.54/2002 dated 17-2-2006 passed by the 2nd respondent.

P7: Copy of the order No.Survey/G5.4312/06 dated 7-7-2006 passed by the 1st respondent.

Respondents' Exhibits:- Nil.

(true copy)

kvs/-

K.K.DENESAN, J.

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WP(C).No.20090 of 2006-N.

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Dated this the 25th day of August, 2006.

J U D G M E N T

The petitioner is working as I Grade Surveyor in the Office of the Special Tahsildar (LA No.1), Kollam. Disciplinary proceedings were initiated against him vide memo of charges issued by the 2nd respondent on 21-1-2002. The petitioner submitted his written statement of defence in reply to the memo of charges. The 2nd respondent considered the written statement of defence and passed Ext.P3 order finding that the petitioner is guilty of the charges and imposing on him the penalty of withholding three increments with cumulative effect. Feeling aggrieved, the petitioner filed a statutory appeal before the 1st respondent. As per Ext.P4 order passed on 18-12-2004, the 1st respondent set aside Ext.P3 order on the ground that before imposing the major penalty of withholding three increments with cumulative effect, the procedure laid down in Rule 15 of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 (for short, the Rules only) ought to have been followed. The 1st

respondent remitted the matter to the 2nd respondent to take de novo action in accordance with law and pass fresh orders. The 2nd respondent, thereupon, issued Ext.P5 memo of charges dated 12-1-2005 calling upon the petitioner to submit his explanation. The petitioner filed his written statement of defence. This time, the 2nd respondent, after considering the written statement of defence took the view that the charges levelled against the petitioner were not that serious to attract a major penalty and passed Ext.P6 order dated 17-2-2006 administering a 'warning' to the petitioner.

2. The 1st respondent took suo motu action and set aside Ext.P6 as per Ext.P7 order dated 7-7-2006. The 1st respondent directed the 2nd respondent to forward to him the relevant records so as to proceed against the petitioner in disciplinary action by holding a formal enquiry.

3. Feeling aggrieved by Ext.P7, this Writ petition has been filed. The petitioner has sought for a writ of certiorari to quash Ext.P7 and for a writ of mandamus directing the respondents to confirm Ext.P6 and to injunct the 1st respondent from initiating any steps against the petitioner.

4. The main contention urged in the writ petition is that Ext.P7 is liable to be set aside for noncompliance of

the principles of natural justice. According to the petitioner, the 1st respondent ought to have afforded him an opportunity of being heard before Ext.P6 was set aside.

5. The 1st respondent has filed a detailed statement in answer to the averments and the contentions in the Writ petition. The counter-affidavit shows that Ext.P6 was set aside in exercise of the powers conferred on the appellate authority under Rule 37 of the Rules which does not require service of show cause notice to the petitioner or affording him an opportunity of being heard. It is contended that viewed in the above perspective Ext.P7 order is not vitiated by any legal infirmity.

6. Heard both sides.

7. Admittedly, the power exercised by the 1st respondent to pass an order in the nature of Ext.P7 is Rule 37 of the Rules which reads as follows:

> **"37. Review of orders by appellate authorities:-The authority to which an appeal against an order imposing any of the penalties specified in rule 11(1) lies may, of its own motion or otherwise, call for the records of the case in a disciplinary proceedings, review any order passed in such a case and after consultation with the Commission where such consultation is necessary, pass such orders as it deems fit, as if the Government servant had preferred an appeal against such order:**
>
> **Provided that no application for review**

> **shall be entertained after the expiry of a period of one month from the date of passing the order:**
>
> **Provided further that no action under this rule shall be initiated more than one year after the date of the order to be reviewed."**

It is true that Rule 37 does not expressly provide any inbuilt safeguard against the exparte decision to review the order of the disciplinary authority. The statute vests in the appellate authority the power to take suo motu action against the delinquent government servant after calling for the records of the disciplinary case and to review any order passed in such a case, after consultation with the State Public Service Commission, wherever required. A perusal of Ext.P7 order shows that the 1st respondent has cancelled or set aside Ext.P6 order by which the 2nd respondent has closed the disciplinary file holding that the misconduct alleged against the petitioner is minor in nature and therefore the imposition of major penalty is not warranted. Though it is open to the appellate authority to feel that the order thus passed by the 2nd respondent is not in accordance with law, natural justice demands that before unsettling the decision taken by the 2nd respondent, the petitioner is heard. This right of hearing, though not expressly provided in Rule 37 of the Rules, will have to be read into that provision. It

is settled law that principles of natural justice shall inform every action of the administrative or quasi judicial authority when the action taken by such authorities is likely to deprive the accrued rights of the citizen. It is also well settled that before taking the action which would result in adverse civil consequences, the right of hearing shall be read into the statute unless excluded by express words.

8. The Constitutional Bench of the Supreme Court in *Mohinder Singh v. Chief Election Commissioner* (AIR 1978 SC 851), had occasion to consider at some length the relevance of natural justice in the decision making process. The judgment was authored by Krishna Iyer J. In para.43 of the above judgment the Court observed as follows:

> **"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary days of Adam - and of Kautilya's Arthasastra - the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are**

> noble and not newfangled. Today its application must be sustained by current legislation, caselaw or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

The observations made in para.55 are also apposite. The following from the above paragraph is hence quoted below:

> ".....Normally, natural justice involves the irritating inconvenience for men in authority, of having to hear both sides since notice and opportunity are its very marrow. And this principle is so integral to good government, the onus is on him who urges exclusion to make out why."

It was argued before the Constitution Bench that unless civil consequence ensued, hearing was not necessary. The above submission was made in the light of the well accepted principle that a civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. In the above context, the Apex Court while examining the content and meaning of the expression 'civil consequences' held that the words 'civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

9. Case law to the point fortifies the view, I have taken. Observations made by Byles, J. in *Copper v. Wandsworth Board of Works* [(1863) 14 CBNS 180 = (1863) 143 ER 414], are worth quoting, "......although there are no positive words in a statute requiring that a party shall be heard, that the justice of the common law will supply the omission of the Legislature." The Apex Court in *Union of India v. J.N.Sinha* (AIR 1971 SC 40), speaking through Justice Hegde held that, if a statutory provision can be read consistently with the principles of natural justice, the courts should do that because it must be presumed that the Legislature and the statutory authorities intended to act in accordance with those principles. In S*mt.Indira Nehru Gandhi v. Raj Narain* (AIR 1975 SC 2299), the law was stated by Mathew J, thus: "Even if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance". (see page 2378).

10. In *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), the Supreme Court (judgment by Bhagwati, J.) held as follows:

> **"The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must**

> **not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."**

11. Rule 37 does not exclude the application of the principles of natural justice. Therefore, the issuance of notice to the affected party before passing orders under Rule 37 and thereby complying with the requirement of audi alteram partem is mandatory. The contention that the petitioner will have ample opportunity to defend his case against any further action taken by the 1st respondent does not appeal to me as an acceptable proposition of law. The petitioner, who had already undergone an enquiry and was inflicted with the penalty of censure, is entitled to say that he need not undergo the ordeal once again. No doubt, it is for the competent authority to decide whether the plea made by the employee is acceptable or not. The contention that he can defend his case at the time of enquiry, is no justification to cancel Ext.P6 order, exparte. Ext.P7 is, therefore, quashed. The Writ petition is allowed to the

above extent. I make it clear that this Judgment will not stand in the way of the 1st respondent taking appropriate action in accordance with law if found necessary.

K.K.DENESAN, JUDGE.

kvs/-